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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)
and)

PR Docket No. 93-144)
RM-8117, RM-8030)
RM-8029)

Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding of 800 MHz SMR)

PP Docket No. 93-253)

COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

In this Further Notice of Proposed Rule Making, FCC 94-271, released in on November 4, 1994, FNPRM, the Commission seeks comments on a new regulatory scheme for the 800 MHz Specialized Mobile Radio (SMR) service and proposes new application and licensing procedures that include competitive bidding for mutually exclusive applications.

The National Telephone Cooperative Association ("NTCA") is a national association representing approximately 500 small and rural independent local exchanges carriers ("LECs") providing telecommunications services to interexchange carriers and subscribers throughout rural America.

DISCUSSION

- I. THE WIRELINE RESTRICTION AGAINST TELEPHONE COMPANY PROVISION OF SMR SERVICES SHOULD BE REMOVED BEFORE OR AT THE SAME TIME THE NEW REGULATORY SCHEME FOR SMR IS ADOPTED.

NTCA members have the willingness and ability to offer rural areas SMR services but are prohibited from doing so by Commission

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rules that make wireline carriers ineligible to provide the service. NTCA's comments in this proceeding assume that the Commission will follow through with its proposal to repeal the ban.¹ NTCA reiterates here its position in the docket proposing repeal.

There is no longer any rational basis for the prohibition in light of the 1993 amendments which established a new regulatory framework for mobile services and provided for competitive bidding for the spectrum needed to provide the services in most circumstances.² Each of the premises upon which the ban is based no longer exists. The telecommunications industry is no longer the monolith it was when the SMR ban was imposed in 1974. In today's world of multiple providers and multiple mobile services, wireline carrier participation in mobile services like SMR will increase rather than impede competition. Congress gave the Commission authority to repeal the ban in recognition of the fact that the new regulatory structure it mandated would alter traditional common carrier/private carrier distinctions that were the basis for the ban.

The Commission should first unconditionally repeal the ban so that it is clear to all that the rules proposed for licensing assume that wireline common carriers will apply for those

¹ See Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GN Docket No. 94-90, Notice of Proposed Rulemaking, FCC 94-202, adopted August 2, 1994, released August 11, 1994.

² 47 U.S.C. §§ 153 (n) and 333.

licenses and so that wireline carriers can focus attention on the impact of the licensing scheme to their operations.

Repeal of the ban will benefit the public and establish consistency in the regulatory framework. Repeal is especially important to fulfillment of the Congressional mandate that rural areas receive spectrum based services. Provided the Commission adopts special measures to assure rural telephone company participation in the service when licenses are awarded through competitive bidding, rural areas will benefit if the small telephone companies providing services to their areas have the option to provide SMR services there. These small telephone companies are usually businesses with local ties and long standing commitments to the communities they serve. They are usually in the best position to respond to the telecommunications needs of the areas they serve and have an interest in providing a full complement of services to these areas.

II. THE COMMISSION SHOULD ADOPT A LICENSING SCHEME THAT PROMOTES DEPLOYMENT OF SMR SERVICES IN RURAL AREAS.

NTCA is concerned that rural areas and rural telephone companies will be adversely affected by the Commission's proposal to use auctions to license the remaining 10 MHz of contiguous SMR spectrum on a Major Trading Area (MTA) basis. The Commission proposes to license four 2.5 MHz blocks but may adopt alternative proposals. These alternatives include a proposal to award a single 10Hz licenses in the MTAs. FNPRM, ¶¶'s 20-23. Under the latter alternative, rural areas are most likely to be the last to receive any newly authorized service or they may receive no

service at all. The areas served by small rural companies are the most sparsely populated and build-out to the most rural areas may be avoided altogether depending on how the Commission defines what constitutes coverage for purposes of its requirement that build-out to two-thirds of the population in the MTA service area must be provided within 5 years. FNPRM ¶ 48. It is predictable that the unserved one-third will be the population residing in rural areas.

Auctions do not appear to be appropriate for SMR in light of the already existing licensed service. If the Commission nonetheless proceeds with auctions, NTCA proposes an alternative to lessen the likelihood that rural areas receive service last. It suggests that the Commission adopt a partitioning mechanism similar to that adopted in connection with the licensing of broadband PCS. Partitioning will also ensure that rural telephone companies have the opportunity to obtain licenses to provide SMR service to rural areas. Partitioning of the MTA licensing areas will also allow the Commission to fulfill the mandate of 47 U.S.C. § 309(j). As the Commission acknowledges, 309(j) mandates that the commission "ensure that small businesses, rural telephone companies and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." FNPRM ¶ 87.

The Commission's broadband PCS rules allow grants of partitioned licenses to rural telephone companies. Rural

telephone companies are permitted to acquire the licenses through agreements with consortia of which they are members or through private negotiation with other winning bidders. 47 C.F.R. 24.714 by creating an exception to 47 C.F.R. § 24.202 which provides for licensing of broadband PCS on an MTA and Basic Trading Area (BTA) basis. NTCA suggests adoption of a similar exception to 47 C.F.R. 24.714. In addition, NTCA proposes that the Commission add to the rights it proposes to grant MTA licensees, the right to partition licenses in agreement with rural telephone companies.³

III. SPECIAL MEASURES ARE REQUIRED TO ASSURE THAT RURAL AREAS RECEIVE SERVICE WHEN COMPETITIVE BIDDING IS USED TO GRANT LICENSES.

The Commission questions whether special bidding provisions are needed to ensure the participation of rural telephone companies in the provision of SMR service. Its conclusion that special preferences are not warranted for rural telephone companies is based on the assumption that SMR build-out costs are relatively modest and the view that rural companies may use their existing infrastructure to support integrated 800 MHz SMR service in their wireline service areas. Even if both of these assumptions are correct, at a minimum, rural telephone companies that meet the small business test adopts should receive the same preferences as any other small businesses in addition to the right to partition. This is only fair.

³ This right is not implicit in the rights enumerated in § 12 of the FNPRM.

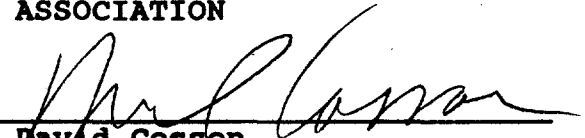
The cost of acquiring spectrum is not ipso facto less for a rural telephone company just because it provides wireline service. The intent of 309(j) is not to handicap rural companies but ensure opportunities. Congress was well aware that rural telephone companies have an existing infrastructure when it passed 309(j). Nonetheless it included the companies among the designated entities the Commission must accommodate whenever it decides to allot licenses at auction sales. In view of this, the Commission should clearly state that small business preferences apply to rural telephone companies meeting the definition of small businesses. In addition, as stated above, the Commission should allow rural telephone companies to obtain and operate licenses for parts of the MTA licenses in the contiguous 800 MHz SMR block or blocks.

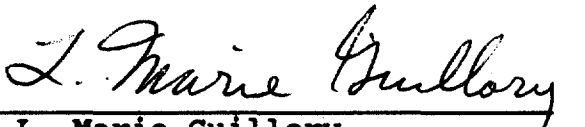
IV. CONCLUSION

In light of the above, NTCA urges the Commission to adopt a regulatory framework and licensing rules that (1) permits telephone common carriers to provide SMR; (2) permits partitioning of licenses awarded on an MTA or area wide basis; and (3) provide that rural telephone companies that meet small business definitions are eligible for small business preferences.

Respectfully submitted,

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January 5, 1995

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing
Comments of the National Telephone Cooperative Association in PR
Docket No. 93-144 RM-8117, RM-8030, RM-8029 PP Docket No. 93-253
was served on this 5th day of January 1995, by first-class, U.S.
Mail, postage prepaid, to the following persons on the attached
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